

EXHIBIT 36

Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

Case No. 22-cv-4563

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5 COMMODITY FUTURES TRADING COMMISSION,

6 Plaintiff,

7 -against-

8 GEMINI TRUST COMPANY,

9 Defendant.

10 - - - - -x

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13 CONFIDENTIAL VIDEOTAPED DEPOSITION OF

14 SHANE MOLIDOR

15 NEW YORK, NEW YORK

16 WEDNESDAY, DECEMBER 13, 2023

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22 REPORTED BY:

23 DANIELLE GRANT

24 JOB NO.: 6305652

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resigned in that role. In or around March of 2023, I created my own consulting company of which I am currently employed as a consultant.

Q I want to focus on your time when you were working at Gemini.

When you first started, what was your title?

A Customer support specialist.

Q And did your title change during your tenure at Gemini?

A No.

Q Who did you report to?

A At the beginning of my employment, in or around January of 2016 up until March of 2017, I reported to Cameron Winklevoss. In or around March of 2017, my direct report changed to report directly to Benjamin Small, who at the time, I believe, had received a promotion to chief operating officer of Gemini.

Q What was Cameron Winklevoss' role?

A My recollection is that his role at the time was the president of Gemini.

1 MOLIDOR

2 times, had loans outstanding with Pearl
3 Street. Those institutional clients would
4 be one, Circle Internet Financial; two, XBT
5 Ops; and, three, B2C2.

6 Q And to your knowledge, did Pearl
7 Street ever lend to anyone Gemini -- any --
8 anyone that was not a Gemini customer?

9 MR. LAVIGNE: Objection. Form.

10 A I have no insight of Pearl Street
11 operations aside from my interaction between
12 Pearl Street and the three institutional
13 clients that received the loans.

14 Q What was the purpose of the Pearl
15 Street loans?

16 MR. LAVIGNE: Objection. Form.

17 Asked and answered.

18 A I can't speak to what the general
19 purpose may have been.

20 Q You mentioned earlier that the
21 Pearl Street loans were an incentive to
22 trade on Gemini.

23 Can you explain how they were an
24 incentive?

25 MR. LAVIGNE: Objection.



1 MOLIDOR

2 Misstates testimony.

3 A As I mentioned earlier, my general
4 recollection is that receiving a Pearl
5 Street loan would expand an institutional
6 client's global balance sheet.

7 Q And how would that benefit Gemini?

8 MR. LAVIGNE: Objection.

9 A I can't speak to how it may have
10 benefited Gemini.

11 Q Did it incentivize the borrower to
12 trade on Gemini?

13 MR. LAVIGNE: Objection. Form.

14 A I can't speak to how a borrower
15 may or may not have been incentivized by
16 receiving a Pearl Street loan.

17 Q Was it intended to incentivize
18 trading on Gemini?

19 MR. LAVIGNE: Objection. Asked
20 and answered.

21 A I have general recollections of
22 discussions around increasing trade activity
23 on Gemini with recipients of Pearl Street
24 loans.

25 Q And who were those discussions

1 MOLIDOR

2 with?

3 A I don't have independent
4 recollections of these conversations. My
5 general recollections is that these
6 conversations would have been had with the
7 three recipients of the Pearl Street loans.

8 Q Did you have any discussions with
9 people internal to Gemini about how the
10 Pearl Street loans would be an incentive?

11 MR. LAVIGNE: Objection.

12 A I don't have independent
13 recollections. My recollections are limited
14 to review of documentation as past -- part
15 of past arbitrations.

16 Q While you worked at Gemini, about
17 how much of your time was spent on Pearl
18 Street loans?

19 A To the best of my recollection, I
20 would estimate roughly 10 percent of my
21 time.

22 Q Did you understand working on
23 Pearl Street loans to be part of your Gemini
24 job responsibilities?

25 MR. LAVIGNE: Objection. Form.

1 MOLIDOR

2 A I can't speak to my general
3 understanding during my time at Gemini more
4 than seven years ago.

5 Q Did you work on Pearl Street
6 matters during a -- regular Gemini business
7 hours?

8 A General recollection, yes.

9 Q Did you work on Pearl Street
10 matters using Gemini computers and office
11 equipment?

12 A Based on my recollection, yes.

13 Q Did you communicate about Pearl
14 Street using Gemini messaging platforms?

15 MR. LAVIGNE: Objection. Form.

16 A My general recollection is yes.

17 Q Was your Pearl Street-related work
18 intended to benefit Gemini?

19 MR. LAVIGNE: Objection. Form.

20 A I can't speak to what the
21 intention of my scope of responsibilities
22 was meant to be.

23 Q Do you have an understanding of
24 why Gemini didn't lend directly to
25 customers?

1 MOLIDOR

2 vernacular that is used. That might have
3 just been something that I said.

4 Q During your time at Gemini, did
5 others at Gemini refer to the Pearl Street
6 loan recipients as "VIP customers"?

7 A I can't speak to how others may
8 have referred to customers.

9 Q Based on your understanding, did
10 you hear others refer to the Pearl Street
11 borrowers as VIP customers?

12 A I don't remember.

13 Q You mentioned "Gemini-centric
14 terms."

15 What is a Gemini-centric term?

16 A I don't have independent
17 recollections of discussing Gemini-centric
18 terms. My general recollections would be
19 they that these referred to increased trade
20 activity on the platform for recipients of
21 Pearl Street loans.

22 Q And during your time at Gemini,
23 did you have any involvement in helping
24 transfer the loan proceeds to the loan
25 recipients?

1 MOLIDOR

2 Q What did you mean by
3 Gemini-centric terms?

4 A I can't speak to what I may have
5 meant in January of 2017, almost seven years
6 ago.

7 Q Sitting here today, what do you
8 understand "Gemini-centric terms" to refer
9 to?

10 MR. LAVIGNE: Objection.

11 A My general recollection of
12 Gemini-centric terms, based on review of
13 documentation and preparation for past
14 arbitrations, is that this refers to trade
15 activity which would occur on Gemini for
16 recipients of Pearl Street loans.

17 MR. LAVIGNE: Same objection.

18 Same application.

19 Q And has your understanding of
20 Gemini-centric terms changed over the last
21 seven years?

22 MR. LAVIGNE: Objection.

23 A I can't speak to my understanding
24 more than seven years ago; therefore, I
25 can't speak to any sort of evolution or

1 MOLIDOR

2 change that may or may not have occurred.

3 Q Do you have any reason to think
4 that your understanding of Gemini-centric
5 terms might have changed over the past seven
6 years?

7 MR. LAVIGNE: Objection.

8 A Again, I can't speak to my state
9 of mind or understanding more than seven
10 years ago; therefore, I can't speak to
11 whether I may or may not believe that they
12 may have changed.

13 Q Well, I'm asking whether you have
14 any reason to think that it has changed.

15 MR. LAVIGNE: Objection.

16 A I can't respond to that question
17 given that I can't recall my state of mind
18 or understanding more than seven years ago.

19 Q Now, in this same entry, you
20 state: Pearl Street should be a tool to
21 bolster operations.

22 Do you see that?

23 A I see it.

24 Q What does "Pearl Street should be
25 a tool to bolster Gemini operations" mean?



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2 liabilities on the exchange.

3 Q Have you ever heard of Gemini
4 or -- did you ever hear of Gemini stating
5 that it required orders to be fully
6 pre-funded?

7 A Yes. I have recollection of this.

8 Q What does "pre-funded" mean?

9 A My understanding of pre-funding is
10 that this means a Gemini account balance
11 must reflect assets on deposit in order to
12 then buy assets with those assets; so
13 selling your assets to receive another asset
14 and therefore engaging in a trade.

15 Q Do you recall having discussions
16 with XBTO about providing an operational
17 float in connection with the Pearl Street
18 loan?

19 MR. LAVIGNE: Objection. Form.

20 A I have general recollections of
21 discussing operational floats with XBT Ops.

22 Q Do you have any discussion --
23 recollection of discussing operational
24 floats in connection with Pearl Street Loans
25 with XBTO?

1 MOLIDOR

2 A Not that I can see.

3 Q And sitting here today, to the
4 best of your recollection, the only loan
5 agreement that had Gemini-centric terms was
6 for XBT; is that right?

7 MR. LAVERNE: Objection to form.

8 A That's right.

9 Q And is it fair to say that there
10 was no mechanism for Gemini to prevent an
11 entity that borrowed bitcoin from Pearl
12 Street to take the bitcoin off the exchange?

13 A I am not aware of any such
14 mechanism.

15 Q So there was crypto lock, for
16 example?

17 A I don't know what crypto lock is.

18 Q You have never heard of that term?

19 A No.

20 Q Now, XBT, that was a liquidity
21 provider to crypto exchanges; is that right?

22 A My understanding of XBT Ops is
23 that they are an institutional trading
24 counterparty that traded on Gemini as well
25 as other crypto exchanges.

1 MOLIDOR

2 Do you see that?

3 MR. LAVERNE: Objection. You
4 didn't read it right.

5 MR. LAVIGNE: What's that?

6 MR. LAVERNE: You didn't read it
7 right. You skipped over some words.

8 MR. LAVIGNE: I'm trying to move
9 it along for your benefit.

10 Q Do you see the first sentence of
11 the document, Mr. Molidor?

12 A I do, yes.

13 Q And were you familiar with that
14 part of the policy at the time you were at
15 Gemini?

16 A My recollection of the policies is
17 that they evolved over time. I can't speak
18 to my state of mind or potential
19 understanding at that point.

20 Q Okay. But it's fair to say that
21 for an operational advance or a pre-credit
22 or an advance credit, the idea was that a
23 customer would send evidence or proof of an
24 incoming deposit, and Gemini would give a
25 credit in that amount to allow the person to

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2 trade before the funds actually hit the
3 account; is that fair?

4 MR. LAVERNE: Objection.

5 A My understanding of the policies
6 as they're written here is that wire deposit
7 could receive an operational advance if the
8 client provided any number of proof that the
9 funds would be sent.

10 Q Okay. And when you were approving
11 advanced credits or pre-credits, you were
12 approving this, an operational advance; is
13 that fair?

14 MR. LAVERNE: Objection.

15 A I'm sorry. Is there a particular
16 instance that you are referring to?

17 Q Just in general, when you were
18 shown documents earlier about pre-credits or
19 advance credits?

20 MR. LAVERNE: Same objection.

21 A My understanding of an operational
22 advance is that it could provide a credit to
23 the account's account balance prior to
24 receiving funds on deposit.

25 Q And it's fair to say that for

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2 operational advances, the client needed to
3 show that they were going to or indicate
4 that they were going to send funds in the
5 amount of the credit; is that right?

6 MR. LAVERNE: Objection.

7 A My recollection is that the
8 business practice had many forms of proof or
9 intent of the customer to send funds.

10 Q And what were some of those forms?

11 A In my recollection, forms could be
12 a verbal promise, an indication of good
13 faith based on past trade experience,
14 sometimes a wire deposit receipt or an
15 attestation to holding of funds on chain or
16 a blockchain transaction ID, for example.

17 Q And who made the decision about
18 whether that attestation or that
19 representation was sufficient?

20 MR. LAVERNE: Objection to form.

21 A I think it varies based on the
22 type of operational advance being provided
23 as well as the time at which this occurred
24 at Gemini. For example, as communicated
25 earlier, for certain types of operational

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6 Plaintiff,

7 -against-

8 GEMINI TRUST COMPANY,

9 Defendant.

10 - - - - -x

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13 VOLUME II
14 CONFIDENTIAL VIDEOTAPED DEPOSITION OF
15 SHANE MOLIDOR
16 NEW YORK, NEW YORK
17 THURSDAY, DECEMBER 14, 2023
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22 REPORTED BY:

23 DANIELLE GRANT

24 JOB NO.: 6349727
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yesterday, Mr. Molidor, that your understanding was this policy applied to operational advances of fiat, not digital assets; is that right?

A My recollection is, yes, I testified to that.

Q Okay. And is what I just said consistent with your understanding, your belief is this policy only applies to operational advances not fiat?

Strike that.
Only applies to fiat not digital asset currencies?

A My understanding of this policies and procedures is that operational advances reference wire deposits which references a fiat deposit.

Q And if you look at the bottom of page 8, it says: An operational advance for a wire deposit may be provided to select institutional Gemini accounts in an effort to bridge an incoming wire deposit if the registered user of such a Gemini account can provide proof that their wire is in transit.

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Do you see that?

A Yes, I see that.

Q And it's my understanding, from your testimony yesterday, that that proof of a wire being in transit can take various forms; is that right?

A My recollection is that attestation and proof could take a variety of forms based on communication with the client that is to receive said operational advance and based on my understanding of Gemini's common business practices.

Q Okay. Now am I -- and the policy also says, the next sentence, the time period for an operational advance does not typically exceed 24 hours.

Do you see that?

A That's what the policy says.

Q And for operational advances of fiat, I believe your testimony from yesterday was you don't know how many times an operational advance exceeded 24 hours; is that right?

A I don't recall what my testimony

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A No.

Q And for an operational advance list to be granted there need to be -- there needed to be some proof, as the policy says, that -- for fiat, that funds were in transit; is that right?

MR. LAVERNE: Objection. Asked and answered.

A I believe I've responded to that.

Q I want you to respond again then.

A Based on my recollection, proof could take on any number of forms. For example, the recipient of an operational advance could provide proof by providing an attestation of their intent to send funds by alluding to funds that are in transfer or in transit, by pointing to funds on an appropriate blockchain, or by providing proof through means of a wire deposit, for example.

Q And --

A These are not exhaustive mechanisms of proof.

Q Okay. And the bottom line is